

JAN 23 2009

A BILL FOR AN ACT

RELATING TO LANDS CONTROLLED BY THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 1978, the Constitution of the State of
2 Hawaii was amended to include Article XII, sections 4, 5, and 6,
3 which established the office of Hawaiian affairs and its board
4 of trustees.

5 Sections 4, 5, and 6 of the state constitution provide:

6 "SECTION 4. The lands granted to the State of
7 Hawaii by Section 5(b) of the Admission Act and
8 pursuant to Article XVI, Section 7, of the State
9 Constitution, excluding therefrom lands defined as
10 "available lands" by Section 203 of the Hawaiian Homes
11 Commission Act, 1920, as amended, shall be held by the
12 State as a public trust for native Hawaiians and the
13 general public.

14 SECTION 5. There is hereby established an Office
15 of Hawaiian Affairs. The Office of Hawaiian Affairs
16 shall hold title to all the real and personal property
17 now or hereafter set aside or conveyed to it which



1 shall be held in trust for native Hawaiians and
2 Hawaiians. There shall be a board of trustees for the
3 Office of Hawaiian Affairs elected by qualified voters
4 who are Hawaiians, as provided by law. The board
5 members shall be Hawaiians. There shall be not less
6 than nine members of the board of trustees; provided
7 that each of the following Islands have one
8 representative: Oahu, Kauai, Maui, Molokai and
9 Hawaii. The board shall select a chairperson from its
10 members.

11 SECTION 6. The board of trustees of the Office
12 of Hawaiian Affairs shall exercise power as provided
13 by law: to manage and administer the proceeds from
14 the sale or other disposition of the lands, natural
15 resources, minerals and income derived from whatever
16 sources for native Hawaiians and Hawaiians, including
17 all income and proceeds from that pro rata portion of
18 the trust referred to in section 4 of this article for
19 native Hawaiians; to formulate policy relating to
20 affairs of native Hawaiians and Hawaiians; and to
21 exercise control over real and personal property set
22 aside by state, federal or private sources and



1 transferred to the board for native Hawaiians and
2 Hawaiians. The board shall have the power to exercise
3 control over the Office of Hawaiian Affairs through
4 its executive officer, the administrator of the Office
5 of Hawaiian Affairs, who shall be appointed by the
6 board."

7 Act 354, Session Laws of Hawaii 1993, stated in pertinent
8 part in section 1: "Until the provisional government was
9 recognized by John L. Stevens, the Kingdom of Hawaii was
10 recognized as an independent nation by the United States,
11 France, and Great Britain. Many native Hawaiians and others
12 view the overthrow of 1893 and subsequent actions by the United
13 States, such as supporting establishment of the provisional
14 government and later the Republic of Hawaii, the designation of
15 the crown and government lands as public lands, annexation, and
16 the ceding of public lands to the federal government without the
17 consent of native Hawaiians, as illegal. Because the actions
18 taken by the United States were viewed as illegal and done
19 without the consent of native Hawaiians, many native Hawaiians
20 feel there is a valid legal claim for reparations. Many native
21 Hawaiians believe that the lands taken without their consent
22 should be returned and if not, monetary reparations made, and



1 that they should have the right to sovereignty, or the right to
2 self-determination and self-government as do other native
3 American peoples.

4 The legislature has also acknowledged that the actions by
5 the United States were illegal and immoral, and pledges its
6 continued support to the native Hawaiian community by taking
7 steps to promote the restoration of the rights and dignity of
8 native Hawaiians."

9 Act 359, Session Laws of Hawaii 1993, stated in pertinent
10 part in section 1:

11 "(4) Throughout the 19th century and until 1893, the United
12 States:

13 (A) Recognized the independence of the Hawaiian
14 Nation;

15 (B) Extended full and complete diplomatic recognition
16 to the Hawaiian government; and

17 (C) Entered into treaties with the Hawaiian
18 government to govern commerce and navigation in
19 1826, 1842, 1849, 1875, and 1887;

20 * * *

21 (6) In pursuit of that conspiracy, the United States
22 Minister and the naval representative of the United



1 States caused armed forces of the United States to
2 invade the sovereign Hawaiian Nation in support of the
3 overthrow of the indigenous and lawful government, and
4 the United States Minister thereupon extended
5 diplomatic recognition to the provisional government
6 formed by the conspirators without the consent of the
7 native Hawaiian people or the lawful Government of
8 Hawaii in violation of treaties between the two
9 nations and of international law;

10 * * *

11 (9) In 1898, Hawaii was annexed to the United States
12 through the Newlands Resolution without the consent of
13 or compensation to the indigenous people of Hawaii or
14 their sovereign government. As a result, the
15 indigenous people of Hawaii were denied the mechanism
16 for expression of their inherent sovereignty through
17 self-government and self-determination, their lands,
18 and their ocean resources."

19 In 1993, Congress passed Public Law 103-150, the Apology
20 Resolution, which stated in pertinent part:

21 Whereas, from 1826 until 1893, the United States
22 recognized the independence of the Kingdom of Hawaii,



1 extended full and complete diplomatic recognition to
2 the Hawaiian Government, and entered into treaties and
3 conventions with the Hawaiian monarchs to govern
4 commerce and navigation in 1826, 1842, 1849, 1875, and
5 1887;

6 * * *

7 Whereas, on July 4, 1894, the Provisional
8 Government declared itself to be the Republic of
9 Hawaii;

10 * * *

11 Whereas, through the Newlands Resolution, the
12 self-declared Republic of Hawaii ceded sovereignty
13 over the Hawaiian Islands to the United States;

14 Whereas, the Republic of Hawaii also ceded
15 1,800,000 acres of crown, government and public lands
16 of the Kingdom of Hawaii, without the consent of or
17 compensation to the Native Hawaiian people of Hawaii
18 or their sovereign government;

19 Whereas the Congress, through the Newlands
20 Resolution, ratified the cession, annexed Hawaii as
21 part of the United States, and vested title to the
22 lands in Hawaii in the United States;



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* * *

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

* * *

SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

The Congress -

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

* * *

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

1 (4) expresses its commitment to acknowledge the
2 ramifications of the overthrow of the Kingdom of
3 Hawaii, in order to provide a proper foundation for
4 reconciliation between the United States and the
5 Native Hawaiian people; and

6 (5) urges the President of the United States to
7 also acknowledge the ramifications of the overthrow of
8 the Kingdom of Hawaii and to support reconciliation
9 efforts between the United States and the Native
10 Hawaiian people."

11 In 1993, the legislature also adopted Concurrent
12 Resolution 93-2 that included almost all of the parts of
13 the Apology Resolution including the finding that:
14 "Whereas the indigenous Hawaiian people never directly
15 relinquished their claims to their inherent sovereignty as
16 a people or over their national lands to the United States,
17 either through their monarchy or through a plebiscite or
18 referendum".

19 Act 329, Session Laws of Hawaii 1997, stated in pertinent
20 part in section 1:

21 "The legislature finds that the events of history
22 relating to Hawaii and Native Hawaiians, including



1 those set forth in . . . [the Apology Resolution]
2 continue to contribute today to a deep sense of
3 injustice among many Native Hawaiians and others. The
4 legislature recognizes that the lasting reconciliation
5 so desired by all people of Hawaii is possible only if
6 it fairly acknowledges the past while moving into
7 Hawaii's future.

8 The legislature further finds that over the last
9 few decades, the people of Hawaii through amendments
10 to their state constitution, the acts of their
11 legislature, and other means, have moved substantially
12 toward this permanent reconciliation. Foremost among
13 these achievements have been the creation of the
14 office of Hawaiian affairs and the allocation by
15 legislative action to the office of Hawaiian affairs
16 of substantial funds out of a portion of the public
17 land trust established by section 5(f) of the
18 Admission Act. The overriding purpose of this Act is
19 to continue this momentum, through further executive
20 and legislative action in conjunction with the people
21 of Hawaii, toward a comprehensive, just, and lasting
22 resolution."



1 In 2001, S. 746, the federal legislation commonly referred
2 to as the "Akaka bill" was passed out of the Senate Committee on
3 Indian Affairs. Senate Committee Report No. 107-66, on the
4 Akaka bill explains that its purpose "is to authorize a process
5 for the reorganization of a Native Hawaiian government and to
6 provide for the recognition of the Native Hawaiian government by
7 the United States for the purpose of carrying on a government-
8 to-government relationship." The Akaka bill authorizes the
9 federal government to negotiate with the State and the
10 reorganized native Hawaiian government for a transfer of land
11 and resources to a native Hawaiian government. The native
12 Hawaiian government would thus have a land base and resources
13 and a status similar to that of other native peoples in the
14 United States. The committee report on the Akaka bill explains
15 that "it is the Committee's intent that the references to 'land,
16 resources, and assets dedicated to native Hawaiian use' include,
17 but not be limited to lands set aside under the Hawaiian Homes
18 Commission Act and ceded lands."

19 In 2007, H.R. 505, the latest version of the Akaka bill,
20 passed the United States House of Representatives. Section 8 of
21 H.R. 505 also includes a provision authorizing the United States
22 and State of Hawaii to "enter into negotiations with the Native



1 Hawaiian governing entity designed to lead to an agreement
2 addressing such matters as the transfer of lands, natural
3 resources, and other assets, and the protection of existing
4 rights related to such lands or resources."

5 In January 2008, the Hawaii Supreme Court in Office of
6 Hawaiian Affairs v. Housing And Community Development
7 Corporation Of Hawaii, 117 Hawaii 174, 177 P.3d 884 (2008),
8 enjoined the State from selling or otherwise transferring to
9 third parties any ceded lands from the public lands trust until
10 the claims of the native Hawaiian people to the ceded lands have
11 been resolved. In October 2008, the United States Supreme Court
12 granted the State's petition for certiorari in the foregoing
13 case.

14 The purpose of this Act is to require adoption of a
15 concurrent resolution by two-thirds majority vote of each house
16 of the legislature in order to sell or exchange ceded lands.

17 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
18 amended by adding a new part to be appropriately designated and
19 to read as follows:

20 "PART . CEDED LANDS



1 **§171- Sale of ceded lands under the control of state**
2 **departments and agencies; legislative approval required. (a)**

3 This section applies to the following lands:

4 (1) Land defined as public lands under section 171-2;

5 (2) Land set aside pursuant to law for the use of the
6 United States;

7 (3) Land to which the United States relinquished the
8 absolute fee and ownership under section 91 of the
9 Organic Act prior to the admission of Hawaii as a
10 state of the United States unless subsequently placed
11 under the control of the board of land and natural
12 resources and given the status of public lands in
13 accordance with the state constitution, or other laws;

14 (4) Land to which the university of Hawaii holds title;

15 (5) Land to which the Hawaii housing finance and
16 development corporation in its corporate capacity
17 holds title;

18 (6) Land to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;



1 (7) Land that is set aside by the governor to the Aloha
2 Tower development corporation; land leased to the
3 Aloha Tower development corporation by any department
4 or agency of the State; or land to which the Aloha
5 Tower development corporation holds title in its
6 corporate capacity;

7 (8) Land that is set aside by the governor to the
8 agribusiness development corporation; land leased to
9 the agribusiness development corporation by any
10 department or agency of the State; or land to which
11 the agribusiness development corporation in its
12 corporate capacity holds title; or

13 (9) Land to which the high technology development
14 corporation in its corporate capacity holds title.

15 (b) Notwithstanding any law to the contrary, no sale of
16 lands under subsection (a) in fee simple, including land sold
17 for roads and streets, shall occur without the prior approval of
18 the sale by the legislature by concurrent resolution to be
19 adopted by each house by at least a two-thirds majority vote of
20 the members to which each house is entitled in a regular or
21 special session at which a concurrent resolution is submitted
22 for approval of the sale.



1 (c) The state department or agency proposing to sell state
2 land under subsection (b) shall submit for introduction to the
3 legislature a concurrent resolution for review of any sale of
4 state land. The concurrent resolution shall contain a list of
5 all sales of state land proposed by the state department or
6 agency. The concurrent resolution shall contain the following
7 information:

8 (1) The location and area of the parcels of land to be
9 sold;

10 (2) The appraisal value of the land to be sold;

11 (3) The names of all appraisers performing appraisals of
12 the land to be sold;

13 (4) The date of the appraisal valuation;

14 (5) The purpose for which the land is being sold; and

15 (6) A detailed summary of any development plans for the
16 land to be sold.

17 (d) If the legislature fails to approve the concurrent
18 resolution by at least a two-thirds majority vote of both
19 houses, the transaction shall not be consummated by the state
20 department or agency.



1 **§171- Exchange of lands under the control of state**
2 **departments and agencies for private land; legislative approval**
3 **required.** (a) This section applies to the following lands:
4 (1) Land defined as public land under section 171-2;
5 (2) Land set aside pursuant to law for the use of the
6 United States;
7 (3) Land to which the United States relinquished the
8 absolute fee and ownership under section 91 of the
9 Organic Act prior to the admission of Hawaii as a
10 state of the United States unless subsequently placed
11 under the control of the board of land and natural
12 resources and given the status of public lands in
13 accordance with the state constitution, or other laws;
14 (4) Land to which the university of Hawaii holds title;
15 (5) Land to which the Hawaii housing finance and
16 development corporation in its corporate capacity
17 holds title;
18 (6) Land to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;



1 (7) Land that is set aside by the governor to the Aloha
2 Tower development corporation; land leased to the
3 Aloha Tower development corporation by any department
4 or agency of the State; or land to which the Aloha
5 Tower development corporation holds title in its
6 corporate capacity;

7 (8) Land that is set aside by the governor to the
8 agribusiness development corporation; land leased to
9 the agribusiness development corporation by any
10 department or agency of the State; or land to which
11 the agribusiness development corporation in its
12 corporate capacity holds title; or

13 (9) Land to which the high technology development
14 corporation in its corporate capacity holds title.

15 (b) Notwithstanding any law to the contrary, no exchange
16 of lands under subsection (a), including land being used for
17 roads and streets, shall occur without the prior approval of the
18 sale by the legislature by concurrent resolution to be adopted
19 by each house by at least a two-thirds majority vote of the
20 members to which each house is entitled in a regular or special
21 session at which a concurrent resolution is submitted for
22 approval of the exchange.



1 (c) The state department or agency proposing the exchange
2 shall submit for introduction to the legislature a concurrent
3 resolution for review of any exchange. The concurrent
4 resolution shall contain a list of all exchanges proposed by the
5 state department or agency and shall be submitted with the
6 proposed exchange deeds for the exchanges to be executed by the
7 parties, together with the following information:

8 (1) The location and area of the parcels of land to be
9 exchanged;

10 (2) The appraisal value of the lands to be conveyed by the
11 State and the private party;

12 (3) The names of all appraisers performing appraisals of
13 the parcels of land to be exchanged;

14 (4) The date of the appraisal valuation;

15 (5) The purpose for which the parcels of land are being
16 exchanged; and

17 (6) A detailed summary of any development plans for the
18 parcels of land to be exchanged.

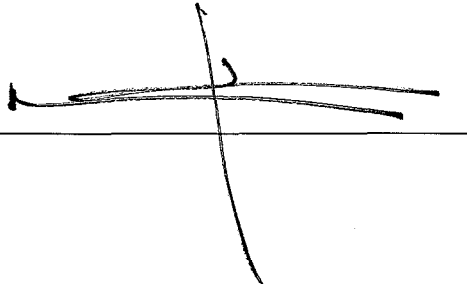
19 (d) If the legislature fails to approve the concurrent
20 resolution by at least a two-thirds majority vote of both
21 houses, the transaction shall not be consummated by the state
22 department or agency."



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY: _____

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Report Title:

Ceded Lands; Public Lands; Sale

Description:

Requires two-thirds majority vote of the legislature to adopt concurrent resolution to sell or exchange certain public lands.

